



(1) The Administrative Law Judge found claimant had suffered an accidental injury while working for the respondent on October 30, 1995. He also ordered medical treatment and temporary total disability weekly benefits, if claimant was taken off work. Respondent argues that claimant failed to meet his burden of proof in this case that it was more probably true than not that claimant's injury was work related. See K.S.A. 1995 Supp. 44-508(g). Respondent points out that the medical reports admitted into evidence by the claimant from claimant's family physician, Todd A. Miller, M.D., only expressed an opinion that claimant's work activities could have contributed to or aggravated his T7-T8 disc herniation and symptomatology. Respondent further asserts that Dr. Miller's opinion would have to be expressed within a degree of reasonable medical probability or, more likely true than not true, in order to prove that claimant's work either caused an injury or aggravated a preexisting condition.

The trier of fact is not bound by the medical evidence presented in a workers compensation case. The trier of fact's function is to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant when deciding the case. See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991). The claimant testified at length concerning the severe stretching that was required of him to perform his job duties. He also testified that over a period of time his symptoms worsened as he continued to work. Further, claimant testified that on October 30, 1995 he slipped and fell on his back as he was climbing down a ladder from the scaffolding. After the fall the claimant noticed that his back symptoms worsened to a point where he was unable to work causing him to miss the full week of work following his accident. Dr. Miller's medical records verify that the claimant had continuing pain when he saw him on November 3, 1995. At that time, Dr. Miller referred the claimant for an MRI. The MRI revealed posterior disc protrusion toward the left at the T7-T8 level.

The Appeals Board finds from the medical records admitted into evidence at the preliminary hearing and coupled with claimant's testimony, that the Administrative Law Judge's finding that the claimant suffered an accidental injury which arose out of and in the course of claimant's employment with the respondent should be affirmed.

(2) Claimant was required by K.S.A. 44-520 to give notice of an accident to the respondent within ten days after the date of such accident. Claimant testified at the preliminary hearing that he told his immediate supervisor that he hurt his back at work two days following his fall that occurred on October 30, 1995. This testimony was uncontradicted by the respondent. Accordingly, since claimant's testimony was uncontradicted and not shown to be untrustworthy, the Appeals Board finds claimant gave the requisite notice to the respondent of his accident within the required ten-day period. See Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated January 30, 1996 should be, and the same is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David M. Bryan, Jr., Wichita, KS  
Vaughn Burkholder, Wichita, KS  
John C. Nodgaard, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director